IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 20672 of 2006

Date of decision : November 15, 2007

M/S Nagesh Hosiery Exports Limited

..... Petitioner

through Mr.Puneet Jindal, Advocate

v.

The Commissioner (Appeals), Patiala Division, Patiala & others,

..... Respondents

through Mr.Vikas Chatrath, Advocate

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

Prayer in the present writ petition is for the issuance of a writ in the nature of certiorari for quashing the order, dated 25.8.2006, passed by respondent No.1, whereby the appeal, filed by the Punjab State Electricity Board, has been accepted, and the order, dated 5.12.2000, passed by the Chief Electrical Inspector, has been set aside.

The Assistant Executive Engineer, Flying Squad, PSEB,

Ludhiana inspected the petitioner's company's electricity meter on 12.10.1994. It was found that blue phase in C.T/P.T unit was not contributing towards energy consumed and, therefore, the meter showed an incorrect reading. Thereafter, the meter was checked by a specialized wing on 19.10.1994. It was found that the disk of the meter was not working on the blue phase due to some internal defect and, therefore, one-third of the consumption was not being recorded. Vide letter, dated 21.10.1994, the respondent-board raised a demand of Rs.14,63,981.33 for the period from September 1990 to September 1994. The respondent-board raised a supplementary demand of Rs.2,41,839.11 for the period from October 1994 to February 1995, and another demand of Rs.1,18,951/- for the month of March, 1995.

The aforementioned demands were impugned by the petitioner by filing a civil suit. As regards the first demand, the petitioner deposited a sum of Rs.3 lacs. As regards the other two demands, the petitioner deposited one-third of the amounts raised. The suit was, however, dismissed as withdrawn, in view of a decision of the Hon'ble Supreme Court that civil suits were not maintainable. The petitioner thereafter filed a petition before the Chief Electrical Inspector, under Section 26(6) of the Indian Electricity Act, 1910 (for short herein after referred to as “the Act”). The Chief Electrical Inspector, after summoning the relevant record, and after a perusal thereof, found that the checking of the disputed meter/CTs on 19.10.1994, was not conclusive, as it had been noted in the report that the CT/PT unit was to be further checked in the M.E Laboratory but the report of the laboratory was not available. It was also held that the defective CT/PT unit had not been made available for checking. As regards the

demands raised by the respondent-board, it was held that the demands were not justified, on account of the consumption pattern of the petitioner-company.

Aggrieved by the aforementioned order, the respondent-board filed an appeal, before the Secretary to the Government of Punjab, Department of Power, Chandigarh, which was subsequently transferred to the Commissioner (Appeals), Patiala Division, Patiala. Vide the impugned order, the appellate authority, accepted the appeal, set aside the order, passed by the Chief Electrical Inspector and held that the demands raised by the respondent-board were legal and valid.

Counsel for the petitioner contends that the Chief Electrical Inspector's order has been set aside, without meeting the conclusion, recorded therein. The Chief Electrical Inspector specifically held that the report of the M.E Laboratory was missing and the CT/PT unit had not been produced for checking before him. The supplementary bills can only be issued for a period of six months prior to the date of checking. It is further contended that the consumption pattern, relied upon by the Chief Electrical Inspector, has been discarded by the appellate authority, without any reason.

Counsel for the respondents, on the other hand, submits that the demands, raised by the respondent-board, are legal and valid. A petition under section 26(6) of the Act, is maintainable, provided the electricity meter is defective. As there was no defect in the meter, the petition, filed, under Section 26(6) of the Act, before the Chief Electrical Inspector, was not maintainable. It is also argued that as the meter was installed in September, 1990 and the error was discovered in 1994, the respondent-

board rightly raised demands for the aforementioned period, on the basis of percentage of error calculated by its officers. It is, thus, asserted that the appellate authority rightly accepted the appeal.

We have heard learned counsel for the parties and perused the paper book, as also the impugned order.

The Chief Electrical Inspector set aside the demands raised by the Electricity Board, as they were contrary to the consumption pattern. It was also held that the report of the M.E. Laboratory had not been produced and the CT/PT unit had not been made available for checking. The appellate authority, however, did not deal with the aforementioned defects, pointed out by the Chief Electrical Inspector. The appellate authority merely reiterated the contentions put forth by the respondent Board, and accepted the appeal without reference to any material and without assigning any reasons. Though a reference has been made to conditions of supply, no details in respect thereof are forthcoming. Even otherwise, counsel for the respondents has raised a significant argument, namely; the maintainability of the application/appeal before the Chief Electrical Inspector, under Section 26(6) of the Act. As already noticed herein above, it has been contended that the appeal was not maintainable, as an appeal can only be filed before the Chief Electrical Inspector, if there is a defect in the meter. Adjudication of this submission, would entail an appraisal of the facts, reports submitted by the inspecting authorities and it would therefore, be appropriate that this objection be decided, as a first resort by the appellate authority.

Consequently, we allow the writ petition, set aside the order dated 25.8.2006, passed by the Commissioner (Appeals), Patiala Division

Patiala, and remit the matter to the Commissioner (Appeals), Patiala Division Patiala for a decision afresh, in accordance with law. No order as to costs.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

November 15, 2007
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